



NEW JERSEY PAID FAMILY LEAVE LAW FACT SHEET

Which Employers are Covered?

- All employers that are subject to the New Jersey Unemployment Compensation Law
- Note there is no 50 employee threshold as under FMLA and NJFLA

Which Employees are Eligible?

- All individuals who have
 - Worked 20 calendar weeks in covered New Jersey employment; or
 - Earned at least 1000 times NJ minimum wage (currently \$7.15/hr) during 52 weeks preceding leave
- Note this may draw in workers considered to be independent contractors given the liberal test used determine “covered employment” under the Unemployment Compensation Law
- Note the minimum “hours of service” and 12 months of employment rules of the FMLA and NJFLA are inapplicable

For What Reasons Can Employees Take Paid “Leave”?

- To care for a newborn, within 12 months of birth
- To care for a newly adopted child, within 12 months of placement
- To care for a family member with serious health condition
 - “Family member” means spouse, civil union partner, domestic partner, parent or child
 - “Parent” means biological, foster, adoptive, step, legal guardian
 - “Child” means biological, adopted, foster, step, legal ward, child of a domestic partner or civil union partner who is under 19 or over 19 but incapable of self care because of mental or physical impairment
 - “Care” means but is not limited to physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters and personal attendant services
 - “Serious health condition” means illness, injury, impairment or physical or mental condition which requires: (i) inpatient care in a hospital, hospice, or residential medical care facility or (ii) continuing medical treatment or continuing supervision by a health care provider

How Much Are Employees Paid While on Paid “Leave”?

- 2/3 of employee’s average weekly wage, up to \$524/week maximum



Who Pays for the Paid “Leave”?

When Employer Uses State Plan:

- 100% funded by employee payroll tax; no employer contribution
- Estimated to be 64¢ per week (\$33/year) per employee
- Administered through existing State Temporary Disability Benefit Program

When Employer Uses Private Plan:

- Unclear – Under a private TDI plan, employer can only require employees to contribute toward the cost of the plan following a written election with a majority of employees agreeing to the plan prior to the effective date of the plan
- Not clear if this same requirement will apply to private Paid Family Leave plan
- If employer does use approved private plan, then employer does not transmit employee contributions to the State

How Much Paid “Leave” Do Employees Get?

- 6 weeks with respect to “any one period” of family leave
- 42 days with respect to “any one period” of family leave taken on intermittent basis to care for sick family member
- 6 weeks of family leave during any 12 month period
- 42 days of family leave during any 12 month period taken on intermittent basis to care for sick family member

Why is “Leave” in Quotes?

- The Paid Family Leave Law is not really a “leave” law (just as the Temporary Disability Benefits Law is not a leave law)
- It is a wage replacement law

Explain That – Are Employers Required to Hold Employees’ Jobs Open?

- Yes and No
- Employers are not required, under the Paid Family Leave Law itself, to restore employees to their employment upon expiration of the leave
 - Small employers (those with fewer than 50 employees, and thus not covered by FMLA or NJFLA) may permanently replace employees who take leave under the Paid Leave Law, according to the Law



- However, employers with 50 or more employees must restore employees to their employment pursuant to the FMLA and/or NJFLA if the employees are eligible for leave under one or both of those laws
- Caution: This so called “small employer exception” has not yet been tested in the courts and small employers can surely expect employees who are terminated after taking Paid Family Leave to litigate their discharges

Is Intermittent Paid Family Leave Allowed To Care for Sick Relative?

- Yes, but with these conditions:
 - Total time within which leave is taken cannot exceed 12 months
 - Must be supported by Medical Certification as to medical necessity
 - Must provide at least 15 days prior notice, absent emergency or unforeseen circumstances
 - Must make reasonable effort to schedule leave to avoid undue disruption
 - Must provide in advance a regular schedule of the days or days of the week when leave will be taken, if possible
 - Employer consent not required

Is Intermittent Paid Family Leave Allowed To Care for Newborn or Adopted Child?

- Yes, but only with the approval of the employer
- Arrangement must be disclosed to State

How Much Notice Must Employees Provide?

To Care for Sick Relative:

- Consecutive leave – must provide prior notice “in a reasonable and practical manner” absent emergency or unforeseen circumstances,
- Intermittent leave – 15 days prior notice, absent emergency or unforeseen circumstances

To Care for Newborn or Adopted Child:

- 30 days prior notice
- Failure to provide required notice will result in loss of 2 weeks worth of benefits, unless due to unforeseeable circumstances

Is a Medical Certification Required?

- Yes, when leave is to provide care to sick family member
- Certification must state date of onset of condition if known; probable duration of condition; medical facts within knowledge of provider regarding the condition; a



statement that condition warrants participation of employee; and estimate of amount of time care will be needed

- If intermittent leave is taken, must also state that intermittent leave is medically necessary, expected duration of intermittent leave, and if leave is for planned medical treatment the dates of the treatment

Is a Neutral Medical Examination Required?

- State may request that family member be examined by a State designed provider at State expense
- May not be more frequent than once per week
- Refusal of family member to cooperate will disqualify employee from benefits, but not retroactively

Is There a Waiting Period for Paid Leave Benefits?

- Yes, there is a 1 week waiting period
- If benefits continue for 3 weeks, benefits are payable retroactive to the first day
- If employee has personal disability and then immediately takes Paid Family Leave, no waiting period between the two

Can Employer Require Substitution of Paid Time Off?

- Employer may **require** employees to first use up to 2 weeks sick, vacation or other fully paid time off accrued under company policy before using Paid Family Leave
 - If so, employee is permitted to take company paid leave during 1 week waiting period
- Employer may **permit** employees to use all available sick, vacation or other fully paid time off accrued under company policy before using Paid Family Leave
- Employer may have total number of days of Paid Family Leave benefits reduced by the number of days of company paid time off
 - Presumably employer notification form to State will allow employer to give this direction

How does Paid Family Leave Interplay with FMLA and NJFLA?

- Paid Family Leave runs concurrent with FMLA and/or NJFLA leave
- Paid Family Leave does not reduce or impact leave rights under FMLA or NJFLA

Can Paid Family Leave Benefits be Provided Through a Private Plan?

- Yes, just like TDI benefits
- Employers can “mix and match” with TDI plan – both State, both private, or one of each



- Private plan must be approved by the State
- The Plan may be insured by the employer, by an insurance company or a union welfare fund
- Private plans must be at least as liberal in benefit amounts, eligibility requirements and duration of payments as the State plan
- Employers intending to cover Paid Family Leave through a private plan must submit their plans to the State at least 90 days prior to the date the private plan is to be effective, so employers should submit them no later than September 30, 2008

How Exactly Does An Employee Obtain Paid Family Leave Benefits?

To-be-issued Regulations should clarify the process, but this much is known from the Law itself

When Employer Uses State Plan:

- Not later than 9th day after leave begins employer must submit to State on State-provided forms information sufficient for State to make eligibility determination, including wage information and information about company paid leave benefits
- Not later than 30 days after leave begins employee must submit a notice and claim to State
- Upon receipt of employer and employee submissions, State will make determination
- For leave taken for sick family member, benefits may be paid for 3 weeks pending receipt of medical certification
- Claim will not be denied based on failure to follow procedures if State determines that notice and certification is supplied as soon as reasonably possible

When Employer Uses Private Plan:

- Pursuant to claim procedures adopted by private plan, which can be no more burdensome on the employee than the State procedures

Can the Employer Deny a Paid Family Leave Benefit Request?

- Not exactly
- The State (or private plan) determines whether to grant Paid Family Leave benefits
- The Employer may challenge State's determination of eligibility by same appeal procedures applicable to TDI appeals

What are an Employer's Notice Obligations?

- Must conspicuously post notice of Paid Family Leave Rights, using form to be issued by DOL
- Must provide written copy of notice to each employee within 30 days after DOL issues



- Must provide written copy of notice to each employee at time of hiring
- Must provide written notice whenever employee notifies employer of need for leave
- Must provide written notice upon first request of employee

What is the Law's Effective Date

- Payroll deductions must commence January 1, 2009
- Benefit available commencing July 1, 2009

What are the Penalties for Filing a False Claim?

- \$250 fine for each false statement made to get benefits
- \$1000 fine for violations with intent to defraud State

What is the Law Called?

- Officially called Family Temporary Disability Leave law
- Commonly known as the Paid Family Leave law

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